APPEAL NO. 040879
FILED JUNE 1, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on March 24, 2004. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) reached maximum medical improvement (MMI) on October 2, 2003, with a 20% impairment rating (IR) as certified by the claimant's treating doctor. The appellant (carrier) appealed, disputing the MMI and IR determination. The carrier contends that the designated doctor specifically explained the basis for his decision. The claimant responded, urging affirmance of the disputed determinations.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, and that the designated doctor certified that the claimant reached MMI on October 8, 2002, with an IR of 0% pursuant to Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). The evidence reflects that the claimant had spinal surgery on December 2, 2002. The designated doctor, subsequent to learning of the claimant's surgery, stated it was still his opinion that the claimant suffered only a minor paravertebral muscle strain in the incident of _____, and reached MMI with 0% impairment prior to the designated doctor's initial examination.

Sections 408.122(c) and 408.125(c) provide that where there is a dispute as to the date of MMI and the IR, the report of the Texas Workers' Compensation Commission (Commission)-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to a request for clarification is also considered to have presumptive weight, as it is part of the designated doctor's opinion. *See also*, Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor was a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). In the instant case, the medical records in evidence support the determination of the hearing officer that the great weight of other medical evidence is sufficient to overcome the presumptive weight accorded to the designated doctor's report. Section 408.125(c) provides that if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors. In this case, we are satisfied that the hearing officer's IR determination is sufficiently supported by the evidence. Accordingly, we cannot agree that the hearing officer erred in determining that the claimant's IR is 20% in accordance with the opinion of the treating doctor.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **UNIVERSAL UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

RON JOHNSON
101 EAST PARK BOULEVARD, SUITE 200
PLANO, TEXAS 75074.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge